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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/662,582

09/15/2003

Lonnie F. Gary

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08/10/2006

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DALLAS, TX 75201-6776

EXAMINER

GROSSO, HARRY A

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/662,582

Applicant(s)

GARY, LONNIE F.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 16-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-15 and 23-25, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

The rejection of claim 13 under 35 U.S.C. 112, second paragraph has been overcome by the amendment filed May 10, 2006. The rejection has been withdrawn.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 10-12, 14, 15, 23-25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rains, of record in view of Moore, Jr. (6,065,632) (Moore).

3. Regarding claims 1, 23 and 24, Rains discloses a beverage holder having side walls, a bottom and an interior cavity capable of receiving a beverage container, and one portion of the side wall is substantially flat with a magnet disposed in the side wall providing a substantially planar side wall surface (Figures 1-3, column 1, lines 70-72, column 2, lines 23-28). Rains does not teach that the beverage holder is insulated or that the magnet is disposed between the inner and outer side wall sections. Moore discloses an insulated beverage holder (10) having side walls, a bottom, an insulating space between the inner and outer walls (inner and outer shells) and an interior cavity capable of receiving a beverage container, and one portion of the wall has a magnet (22) disposed between the inner and outer wall sections (Figures 1 and 2, column 2, lines 33-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of insulated walls with the magnet embedded into the walls as disclosed by Moore in the beverage holder disclosed by

Rains to provide insulation for preventing rapid temperature change in the contents and a method of installing the magnet in the holder that would prevent detachment.

4. Regarding claims 2 and 25, Rains discloses a magnet disposed in the bottom wall of the holder (40, Figure 1, column 2, lines 7-19).

5. Regarding claim 3, Moore discloses the magnet in the bottom wall is embedded between the inner and outer wall sections and It would have been obvious to have embedded the side wall magnet of Rains as modified by Moore in the same manner to secure the magnet in the wall.

6. Regarding claim 4, Rains discloses a disk-shaped magnet (Figures 1 and 3)

7. Claim 5 recites that the magnet is round and has a diameter of about 5 cm. Applicant has not disclosed that this shape and size requirement solves any stated problem or is for any particular purpose, appearing to be a design choice. It appears magnets of a variety of sizes and shapes would be capable of performing as required. The holder of Rains has a round magnet and would be capable of being produced with a magnet meeting the size requirement if deemed desirable.

8. Claim 6 recites that the magnet is round and has a thickness of about 3 mm. Applicant has not disclosed that this shape and size requirement solves any stated problem or is for any particular purpose, appearing to be a design choice. It appears magnets of a variety of sizes and shapes would be inherently capable of performing as required. The holder of Rains has round magnets and would be capable of being produced with a magnet meeting the size requirement if deemed desirable.

9. Regarding claims 10 and 11, the beverage holder of claim 1 is disclosed as discussed in paragraph 3 above. The examiner considers the phrases "insert molded" and "dip molded" to be product by process limitations that do not materially affect structure.

10. Regarding claims 12, 14 and 27, Rains discloses the holder comprises a polymeric material, plastic (column 2, lines 21-23).

11. Regarding claim 15, Rains (Figure 1) and Moore (Figure 2, column 2, lines 36-47) disclose the side wall and bottom are unitarily formed.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rains as modified by Moore in view of Pewitt (3,285,456). Rains as modified by Moore discloses the invention except for the use of permanent magnets. Pewitt discloses a beverage container holder for use in an automobile with a permanent magnet embedded in the holder (4, Figure 5, column 2, lines 15-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a permanent magnet as disclosed by Pewitt in the holder disclosed by Moore and Rains since it is known in the art to use permanent magnets with container holders to provide continuing magnetic attractive force to hold them in place on metallic surfaces such as in an automobile.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rains as modified by Moore and Pewitt in view of Barfield, of record. Rains as modified by Moore and Pewitt discloses the invention except for the use of a specific material for the permanent magnet. Barfield discloses a container holder for mounting on a vertical

ferrous metal surface with a barium or strontium ferrite magnet (3, Figure 2, paragraph 0025). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a magnet comprised of barium ferrite or strontium ferrite as disclosed by Barfield in the beverage holder disclosed by Moore, Rains and Pewitt to provide a magnet with sufficient magnetic energy to support the holder that is known in the art to be used with container holders.

14. Claims 12, 13 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rains as modified by Moore in view of Gustafson et al (4,974,741) Rains and Moore disclose the invention except for the side wall comprising a polymeric foam material. Gustafson et al discloses a beverage holder having inner and outer shells (36) and an insulated layer between them made of foamed polymeric material (Figure 1, column 3, lines 56-66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of insulating polymeric foamed material as disclosed by Gustafson et al in the insulating space of the holder disclosed by Rains and Moore since it is known in the art to use polymeric foam material to provide a sidewall with good insulating properties.

### ***Response to Arguments***

Applicant's filed with the amendment of May 10, 2006 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

This Office Action is not final because the new grounds of rejection were not necessitated by the amendment filed May 10, 2006,

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Nathan Newhouse  
Supervisory Patent Examiner  
Art Unit 3727

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